



**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D.C. 20463

**August 31, 2010**

**William Canfield  
Utrecht & Phillips  
1900 M Street, N.W.  
Suite 500  
Washington, DC 20036**

**Via Facsimile (letter only) to 202-842-5825**

**RE: MUR 5924  
Tan Nguyen for Congress  
Tan Nguyen**

**Dear Mr. Canfield:**

**As you recall, the Commission, on February 3, 2009, found that there is reason to believe Tan Nguyen for Congress and Tien Nguyen, in her official capacity as Treasurer, knowingly and willfully violated 2 U.S.C. §§ 434(b), 441a(f), and 441d(a) and violated 2 U.S.C. § 434(b), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). In addition, the Commission found that there is reason to believe Tan Nguyen knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441d(a), provisions of the Act, and authorized pre-probable cause conciliation.**

**Because Tan Nguyen faced federal criminal charges and a trial, we agreed to postpone conciliation in exchange for agreements to toll the statute of limitations governing civil enforcement of the Act. Mr. Nguyen also agreed to recommence conciliation negotiations in good faith within 30 days of the trial date. We are aware that Mr. Nguyen's criminal trial ended August 27, 2010.**

**For your convenience, I am enclosing (by mail only) a copy of the Commission's notification letters to you and your clients, the Factual and Legal Analyses and the Conciliation Agreement. Please contact me as soon as possible; the Commission only allows conciliation negotiations to continue for a short time before proceeding to the next step in the enforcement process.**

12044314124

Mr. William Canfield  
MUR 5924  
Page 2

This matter will remain confidential in accordance with 2 U.S.C.  
§§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that  
your client wishes the matter to be made public.

Sincerely,



Elena Paoli  
Attorney

Enclosures (by mail only)

February 23, 2009, Letters from Chairman Walther  
Factual and Legal Analyses  
Conciliation Agreement

12044314125



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

William B. Canfield  
Williams & Jensen  
1155 21<sup>st</sup> Street, N.W.  
Suite 300  
Washington, D.C. 20036

FEB 23 2009

RE: MUR 5924  
Tan Nguyen

Dear Mr. Canfield:

On July 13, 2007, the Federal Election Commission (the "Commission") notified Tan Nguyen, your client, of a complaint alleging that your client violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided your client with a copy of the complaint.

After reviewing the allegations contained in the complaint, your client's response, and publicly available information, the Commission on February 3, 2009, found reason to believe that Tan Nguyen knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441d(a), provisions of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

12044314126

In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

On behalf of the Commission,

  
Steven T. Walther  
Chairman

Enclosures  
Factual and Legal Analysis

Courtesy copy of Tan Nguyen for Congress et al.  
Factual and Legal Analysis

cc: Tan Nguyen

Carlsbad, California 92009

12044314127



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Tan Nguyen for Congress  
Tien Nguyen, Treasurer  
12995 Main Street  
Garden Grove, California 92840

FEB 23 2009

RE: MUR 5924  
Tan Nguyen for Congress

Dear Ms. Nguyen:

On July 13, 2007, the Federal Election Commission (the "Commission") notified Tan Nguyen for Congress and you, in your official capacity as Treasurer, (the "Committee") of a complaint alleging that the Committee violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided the Committee with a copy of the complaint.

After reviewing the allegations contained in the complaint, the Committee's response, and publicly available information, the Commission on February 3, 2009, found reason to believe that the Committee and Tien Nguyen, in her official capacity as Treasurer, knowingly and willfully violated 2 U.S.C. §§ 434(b), 441a(f), and 441d(a) and also violated 2 U.S.C. § 434(b), provisions of the Act. The Commission is dismissing the allegation that the Committee violated 2 U.S.C. § 433(c). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

12044314128

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Statement of Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

On behalf of the Commission,

  
Steven T. Walther  
Chairman

Enclosures  
Designation of Counsel Form  
Factual and Legal Analysis

cc: Tan Nguyen

12044314129

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: Tan Nguyen**

**MUR: 5924**

This matter was generated by a complaint filed with the Federal Election Commission by the State of California Department of Justice. *See* 2 U.S.C. § 437g(a)(1).

In August 2006, Congressional candidate Tan Nguyen met with the Orange County Registrar of Voters to express his concern that "illegal aliens," specifically Mexicans, would be voting in the General Election. Nguyen reportedly feared that illegal Hispanic immigrants would vote for his opponent, Loretta Sanchez. The registrar told Nguyen that little could be done to confirm someone's citizenship when they registered to vote. In September, Nguyen spoke with Barbara Coe, the president of California Coalition for Immigration Reform ("CCIR"), and expressed the same concern. She told him that CCIR had often publicized the message that only citizens can vote and faxed him a proposed flyer and several pages of blank CCIR letterhead.

Sometime in September 2006, Roger Rudman, a friend and campaign worker for Nguyen, drafted a letter, warning immigrants of potential criminal penalties for voting, in English in consultation with Tan Nguyen. Rudman subsequently obtained a Spanish translation of the letter and signed it with the fictitious name "Roberto Gonzalez." At the same time, Nguyen ordered a mailing list of voters from his usual list vendor, Political Data, Inc. ("PDI"). Nguyen asked PDI to include voters that were registered Democrats or "Did not state" voters with a Hispanic surname and "Spanish birthplace." Nguyen paid \$1,131.18 for the voter list with his American Express credit card.

1 Also in September 2006, Nguyen gave a piece of the blank CCIR letterhead to Chi Dinh,  
2 his campaign secretary and office manager, and directed her to make a few stylistic changes to  
3 the letterhead (for example, adding an image of an eagle) and create a mailing envelope with a  
4 return address showing CCIR's name and address. Tan Nguyen approved Dinh's changes to the  
5 CCIR letterhead and directed her to electronically merge the Spanish translation of the letter onto  
6 the CCIR letterhead.

7 In early October 2006, Rudman and Mark Nguyen, another friend and campaign  
8 volunteer and also Dinh's fiancé, took charge of the mailing, with the assistance of Dinh. Tan  
9 Nguyen emailed Dinh the list of voters he had purchased from Political Data, and Dinh, using  
10 one of Mark Nguyen's email accounts, emailed the list to the mailing house. Mark Nguyen  
11 asked his Los Angeles Police Department colleague Sergio Ramirez to "proof" the letter, which  
12 Ramirez did. Mark Nguyen asked Ramirez to sign the letter to show that he proofed it. Without  
13 asking Ramirez, Mark Nguyen had Dinh change the signatory of the letter to "Sergio Ramirez"  
14 and scanned Ramirez's signature onto the letter.<sup>1</sup> Mark Nguyen then coordinated getting the  
15 voter list, the letter, and envelope to Mailing Pros, the mailing house used by the Committee for  
16 mailings. Mark Nguyen had several conversations with Mailing Pros regarding the status of the  
17 job.

18 On October 9, Mark Nguyen advised Tan Nguyen that the mailing house was taking  
19 longer than desired. It appears that the Committee wanted the letters to be delivered before the  
20 date for absentee voters to cast ballots. Tan Nguyen called the mailing house and urged it to  
21 expedite the mailing for his friend Mark Nguyen. Tan Nguyen did not tell the mailing house that

---

<sup>1</sup> Right before the letter was sent to the mailing house, Rudman and the Spanish translator, Robert Tapia, told Mark Nguyen that Ramirez's signature was too "feminine." Mark Nguyen then wrote a "new" signature for Ramirez, and that signature was scanned onto the letter.



1 Mark Nguyen worked on his campaign or that the letters were from his Committee. On October  
2 12, after almost all the letters had been mailed, Mark Nguyen went to Mailing Pros and paid  
3 \$4,304.57 for the mailing with his credit card. Mark Nguyen was not reimbursed for the mailing  
4 expense.

5 **A. Tan Nguyen Knowingly and Willfully Accepted an Excessive Contribution in**  
6 **the Form of a Coordinated Communication**

7  
8 Tan Nguyen may have violated 2 U.S.C. § 441a(f) if Mark Nguyen, who paid for the  
9 printing and mailing costs of the letter, coordinated the communication with the Committee,  
10 resulting in an excessive in-kind contribution. A payment for a coordinated communication is an  
11 in-kind contribution to the candidate's authorized committee with which it is coordinated and  
12 must be reported as an expenditure made by that candidate's authorized committee. 11 C.F.R.  
13 § 109.21(b)(1). In addition, as an in-kind contribution, the costs of a coordinated communication  
14 must not exceed a political committee's applicable contribution limits. See 2 U.S.C. § 441a.

15 To determine whether a communication is coordinated, 11 C.F.R. § 109.21 sets forth a  
16 three-pronged test: (1) the communication must be paid for by a person other than a Federal  
17 candidate, a candidate's authorized committee, or political party committee, or any agent of any  
18 of the foregoing; (2) one or more of the four content standards set forth in 11 C.F.R. § 109.21(c)

1 must be satisfied; and (3) one or more of the six conduct standards set forth in 11 C.F.R.

2 § 109.21(d) must be satisfied. See 11 C.F.R. § 109.21(a).<sup>2</sup>

3 1. Payment Prong

4 The payment prong of the coordination regulation, 11 C.F.R. § 109.21(a)(1), is clearly  
5 satisfied. Tan Nguyen acknowledges that Mark Nguyen paid \$4,304.57 to Mailing Pros for  
6 mailing the letter.

7 2. Content Prong

8 The "content" standards include, in relevant part, a public communication that  
9 republishes, disseminates, or distributes campaign materials prepared by the candidate. See  
10 11 C.F.R. § 109.21(c)(2); see also 2 U.S.C. § 441a(a)(7)(B)(iii) (coordination includes "the  
11 financing by any person of the dissemination, distribution, or republication, in whole or in part,  
12 of any broadcast or any written, graphic, or other form of campaign materials prepared by the  
13 candidate, his campaign committees, or their authorized agents.").

14 The content prong is satisfied because the letter constituted a mass mailing, and therefore  
15 a "public communication," of written campaign material that was prepared by the candidate, the  
16 Committee, and their agents using campaign facilities and resources. See 2 U.S.C.  
17 § 441a(a)(7)(B)(iii) and 11 C.F.R. § 109.21(a)(2). Campaign volunteer Rudman drafted the letter

---

<sup>2</sup> The activity at issue occurred in October 2006. Therefore, this Factual and Legal Analysis applies the Commission's amended coordinated communication regulations, which became effective on July 10, 2006. *Coordinated Communications*, 71 Fed. Reg. 33190 (June 8, 2006). In a subsequent challenge, the U.S. District Court for the District of Columbia held that the Commission's content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedure Act; however, the court did not vacate the regulations or enjoin the Commission from enforcing them. See *Shays v. F.E.C.*, 508 F.Supp.2d 10, 70-71 (D.D.C. Sept. 12, 2007) (NO. CIV.A. 06-1247 (CKK)) (granting in part and denying part the respective parties' motions for summary judgment). Recently, the D.C. Circuit affirmed the district court with respect to, *inter alia*, the content standard for public communications made before the time frames specified in the standard, and the rule for when former campaign employees and campaign vendors may share material information with other persons who finance public communications. See *Shays v. F.E.C.*, 528 F.3d 914 (D.C. Cir. 2008). The communications at issue meet other parts of the content and conduct standards that the appellate court did not criticize or invalidate.

with Tan Nguyen's input. In addition, Rudman, Tan Nguyen, Mark Nguyen and Chi Dinh worked on the appearance of the letter.

### 3. Conduct Prong

The Commission's regulations set forth six types of conduct between the payor and the committee, whether or not there is agreement or formal collaboration, that can satisfy the conduct prong. See 11 C.F.R. § 109.21(d). Because Tan Nguyen was materially involved in the content, dissemination, and timing of the letter, their actions clearly satisfy the conduct standard. See 11 C.F.R. § 109.21(d)(2).

In his and the Committee's response, Tan Nguyen claims that he did not approve or authorize the letter, and that he was unaware of its contents until after the letter had been mailed. At the same time, he states that he was "aware of the existence of a mailer outside of the campaign." He also argues that the letter cannot be considered a campaign contribution or expense because it "did not suggest voting for or against anyone's candidacy."

Mr. Nguyen's attempts to distance himself and the Committee from the letter contradict the available information that establishes that the candidate was personally involved in drafting and disseminating the mailer, including copies of emails sent and received by him and the testimony of others involved in the scheme. Moreover, his responses do not undermine the conclusion that the letter constitutes a coordinated communication. A third-party paid for the printing and mailing of the letter, it was prepared by the candidate and the Committee's agents, i.e., Rudman, Chi Dinh and Mark Nguyen, and the candidate requested and paid for the list of voters to whom the letter was sent, provided editing comments, and helped to ensure that the letter was disseminated at the desired time.

1 Because Mark Nguyen paid for the letters to be printed and mailed and he assisted the  
2 Committee in the creation and dissemination of the letter, the letter constitutes a coordinated  
3 communication, and Mark Nguyen's payment of \$4,104.57 is an excessive in-kind contribution  
4 to the Candidate.<sup>3</sup>

5 Moreover, this conduct was knowing and willful.<sup>4</sup> The candidate was personally  
6 involved in drafting and disseminating the letter, and his efforts to try to hide his and the  
7 Committee's involvement strongly suggest a knowing and willful violation of the Act. By acting  
8 through others, sending the letter out under the name of a third-party organization, and stealing  
9 the signature and name of an innocent bystander, Tan Nguyen attempted to conceal the true  
10 sender of the letter to benefit his campaign. Based on the personal involvement of the candidate,  
11 the Commission finds reason to believe that Tan Nguyen knowingly and willfully violated  
12 2 U.S.C. § 441a(f) by accepting an excessive in-kind contribution in the form of a coordinated  
13 communication. See MUR 5517 (James Stork) (candidate personally liable for accepting  
14 excessive in-kind contribution in the form of a coordinated communication).

15 **B. Tan Nguyen Knowingly and Willfully Failed to Include a**  
16 **Required Disclaimer on the Letter**

17  
18 The letter constitutes a public communication because it was a mass mailing (more than  
19 500 pieces of mail matter of identical or substantially similar nature within any 30-day period) to

---

<sup>3</sup> Mark Nguyen made a \$2,100 contribution to Tan Nguyen's committee on September 24, 2006. Thus, because he had not reached the \$2,300 individual contribution limit, \$200 was subtracted from the amount he paid to print and mail the letter.

<sup>4</sup> The phrase knowing and willful indicates that "actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H 2778 (daily ed. May 3, 1976); see also *Federal Election Comm'n v. John A. Drane for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between "knowing" and "knowing and willful"). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5<sup>th</sup> Cir. 1990). An inference of a knowing and willful act may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *Id.*, at 214-15.

12044314136

1 the general public as defined by 11 C.F.R. §§ 100.26 and 100.27. A political committee that  
2 makes a disbursement for a mailing that was paid for and authorized by a candidate, the  
3 candidate's authorized political committee or its agents must state on the communication that it  
4 was paid for by such authorized political committee. *See* 2 U.S.C. § 441d(a)(1). If the  
5 communication was paid for by other persons but authorized by a candidate, the candidate's  
6 authorized political committee or its agents, the communication must state that it was paid for by  
7 such other person and authorized by such political committee. Accordingly, the letter was  
8 required to contain the appropriate disclaimer. 11 C.F.R. § 110.11(a). Disclaimers for written  
9 communications also must be of sufficient type size to be clearly readable, contained in a printed  
10 box set off from other content, and there must be sufficient color contrast between the print and  
11 the background color. *See* 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(2).

12 Although Tan Nguyen argues that he did not "authorize" the letter, his statement is not  
13 credible in light of other statements he has made and is contradicted by the available information.  
14 In short, he helped to draft the letter, paid for part of it, and knew that friends would be sending a  
15 letter out. Thus, the letter should have contained a disclaimer stating that it was authorized by  
16 Tan Nguyen or the Committee and paid for in part by Mark Nguyen and in part by the  
17 Committee. *See* 11 C.F.R. § 110.11(b)(1). Because it did not, Tan Nguyen has violated the Act.

18 Moreover, the violation of the disclaimer provisions appears to have been knowing and  
19 willful. Tan Nguyen likely was somewhat familiar with the Act's requirements because other  
20 mailings sent by the Committee do contain some of the required information required by the  
21 disclosure provisions. *See* Tan Nguyen Response, Exhibits A-D; *see also* [www.tanforcongress.com](http://www.tanforcongress.com) (under "mailers" link, mailers contain some, but not all, information  
22 required by the Act). In addition, it is apparent that Tan Nguyen intentionally concealed his and  
23

**Tan Nguyen**  
**Factual and Legal Analysis**

- 1 his Committee's identities so that recipients would not know that they authorized and paid for the
- 2 letter. See MUR 4919 (East Bay Democratic Committee) (Commission found reason to believe
- 3 respondents knowingly and willfully violated 2 U.S.C. § 441d(a) by concealing identity).
- 4 Accordingly, the Commission finds reason to believe that Tan Nguyen knowingly and willfully
- 5 violated 2 U.S.C. § 441d(a).

12044314137

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** Tan Nguyen for Congress and  
Tien Nguyen, in her official capacity as Treasurer MUR: 5924

This matter was generated by a complaint filed with the Federal Election Commission by the State of California Department of Justice. See 2 U.S.C. § 437g(a)(1).

In August 2006, Congressional candidate Tan Nguyen met with the Orange County Registrar of Voters to express his concern that "illegal aliens," specifically Mexicans, would be voting in the General Election. Nguyen reportedly feared that illegal Hispanic immigrants would vote for his opponent, Loretta Sanchez. The registrar told Nguyen that little could be done to confirm someone's citizenship when they registered to vote. In September, Nguyen spoke with Barbara Coe, the president of California Coalition for Immigration Reform ("CCIR"), and expressed the same concern. She told him that CCIR had often publicized the message that only citizens can vote and faxed him a proposed flyer and several pages of blank CCIR letterhead.

Sometime in September 2006, Roger Rudman, a friend and campaign worker for Nguyen, drafted a letter, warning immigrants of potential criminal penalties for voting, in English in consultation with Tan Nguyen. Rudman subsequently obtained a Spanish translation of the letter and signed it with the fictitious name "Roberto Gonzalez." At the same time, Nguyen ordered a mailing list of voters from his usual list vendor, Political Data, Inc. ("PDI"). Nguyen asked PDI to include voters that were registered Democrats or "Did not state" voters with a Hispanic

1 surname and "Spanish birthplace." Nguyen paid \$1,131.18 for the voter list with his American  
2 Express credit card.

3 .. Also in September 2006, Nguyen gave a piece of the blank CCIR letterhead to Chi Dinh,  
4 his campaign secretary and office manager, and directed her to make a few stylistic changes to  
5 the letterhead (for example, adding an image of an eagle) and create a mailing envelope with a  
6 return address showing CCIR's name and address. Tan Nguyen approved Dinh's changes to the  
7 CCIR letterhead and directed her to electronically merge the Spanish translation of the letter onto  
8 the CCIR letterhead.

9 In early October 2006, Rudman and Mark Nguyen, another friend and campaign  
10 volunteer and also Dinh's fiancé, took charge of the mailing, with the assistance of Dinh. Tan  
11 Nguyen emailed Dinh the list of voters he had purchased from Political Data, and Dinh, using  
12 one of Mark Nguyen's email accounts, emailed the list to the mailing house. Mark Nguyen  
13 asked his Los Angeles Police Department colleague Sergio Ramirez to "proof" the letter, which  
14 Ramirez did. Mark Nguyen asked Ramirez to sign the letter to show that he proofed it. Without  
15 asking Ramirez, Mark Nguyen had Dinh change the signatory of the letter to "Sergio Ramirez"  
16 and scanned Ramirez's signature onto the letter.<sup>1</sup> Mark Nguyen then coordinated getting the  
17 voter list, the letter, and envelope to Mailing Pros, the mailing house used by the Committee for  
18 mailings. Mark Nguyen had several conversations with Mailing Pros regarding the status of the  
19 job.

---

<sup>1</sup> Right before the letter was sent to the mailing house, Rudman and the Spanish translator, Robert Tapia, told Mark Nguyen that Ramirez's signature was too "feminine." Mark Nguyen then wrote a "new" signature for Ramirez, and that signature was scanned onto the letter.



1 On October 9, Mark Nguyen advised Tan Nguyen that the mailing house was taking  
2 longer than desired. It appears that the Committee wanted the letters to be delivered before the  
3 date for absentee voters to cast ballots. Tan Nguyen called the mailing house and urged it to  
4 expedite the mailing for his friend Mark Nguyen. Tan Nguyen did not tell the mailing house that  
5 Mark Nguyen worked on his campaign or that the letters were from his Committee. On October  
6 12, after almost all the letters had been mailed, Mark Nguyen went to Mailing Pros and paid  
7 \$4,304.57 for the mailing with his credit card. Mark Nguyen was not reimbursed for the mailing  
8 expense.

9 A. Tan Nguyen and the Committee Knowingly and Willfully Accepted an  
10 Excessive Contribution in the Form of a Coordinated Communication  
11

12 Tan Nguyen and the Committee may have violated 2 U.S.C. § 441b(f) if Mark Nguyen,  
13 who paid for the printing and mailing costs of the letter, coordinated the communication with the  
14 Committee, resulting in an excessive in-kind contribution. A payment for a coordinated  
15 communication is an in-kind contribution to the candidate's authorized committee with which it  
16 is coordinated and must be reported as an expenditure made by that candidate's authorized  
17 committee. 11 C.F.R. § 109.21(b)(1). In addition, as an in-kind contribution, the costs of a  
18 coordinated communication must not exceed a political committee's applicable contribution  
19 limits. See 2 U.S.C. § 441a.

20 To determine whether a communication is coordinated, 11 C.F.R. § 109.21 sets forth a  
21 three-pronged test: (1) the communication must be paid for by a person other than a Federal  
22 candidate, a candidate's authorized committee, or political party committee, or any agent of any  
23 of the foregoing; (2) one or more of the four content standards set forth in 11 C.F.R. § 109.21(c)

1 must be satisfied; and (3) one or more of the six conduct standards set forth in 11 C.F.R.

2 § 109.21(d) must be satisfied. *See* 11 C.F.R. § 109.21(a).<sup>2</sup>

3                                    1.        **Payment Prong**

4                The payment prong of the coordination regulation, 11 C.F.R. § 109.21(a)(1), is clearly  
5 satisfied. Tan Nguyen and the Committee acknowledge that Mark Nguyen paid \$4,304.57 to  
6 Mailing Fabs for mailing the letter.

7                                    2.        **Content Prong**

8                The "content" standards include, in relevant part, a public communication that  
9 republishes, disseminates, or distributes campaign materials prepared by the candidate. *See*  
10 11 C.F.R. § 109.21(c)(2); *see also* 2 U.S.C. § 441a(a)(7)(B)(iii) (coordination includes "the  
11 financing by any person of the dissemination, distribution, or republication, in whole or in part,  
12 of any broadcast or any written, graphic, or other form of campaign materials prepared by the  
13 candidate, his campaign committees, or their authorized agents.").

14                The content prong is satisfied because the letter constituted a mass mailing, and therefore  
15 a "public communication," of written campaign material that was prepared by the candidate, the  
16 Committee, and their agents using campaign facilities and resources. *See* 2 U.S.C.

---

<sup>2</sup> The activity at issue occurred in October 2006. Therefore, this Factual and Legal Analysis applies the Commission's amended coordinated communication regulations, which became effective on July 10, 2006. *Coordinated Communications*, 71 Fed. Reg. 33190 (June 8, 2006). In a subsequent challenge, the U.S. District Court for the District of Columbia held that the Commission's content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedure Act; however, the court did not vacate the regulations or enjoin the Commission from enforcing them. *See Shays v. F.E.C.*, 508 F.Supp.2d 18, 70-71 (D.D.C. Sept. 12, 2007) (NO. CV.A. 05-1247 (CKK)) (granting in part and denying part the respective parties' motions for summary judgment). Recently, the D.C. Circuit affirmed the district court with respect to, *inter alia*, the content standard for public communications made before the time frames specified in the standard, and the rule for when former campaign employees and common vendors may share material information with other persons who finance public communications. *See Shays v. F.E.C.*, 528 F.3d 914 (D.C. Cir. 2008). The communication at issue meets other parts of the content and conduct standards that the appellate court did not criticize or invalidate.

1 § 441a(a)(7)(B)(iii) and 11 C.F.R. § 109.21(c)(2). Campaign volunteer Rudman drafted the letter  
2 with Tan Nguyen's input. In addition, Rudman, Tan Nguyen, Mark Nguyen and Chi Dinh  
3 worked on the appearance of the letter.

### 4 3. Conduct Prong

5 The Commission's regulations set forth six types of conduct between the payor and the  
6 committee, whether or not there is agreement or formal collaboration, that can satisfy the conduct  
7 prong. See 11 C.F.R. § 109.21(d). Because Tan Nguyen and the Committee were materially  
8 involved in the content, dissemination, and timing of the letter, their actions clearly satisfy the  
9 conduct standard. See *supra*, pp. 4-6. See 11 C.F.R. § 109.21(d)(2).

10 In his and the Committee's response, Tan Nguyen claims that he did not approve or  
11 authorize the letter, and that he was unaware of its contents until after the letter had been mailed.  
12 At the same time, he states that he was "aware of the existence of a mailer outside of the  
13 campaign." He also argues that the letter cannot be considered a campaign contribution or  
14 expense because it "did not suggest voting for or against anyone's candidacy."

15 Mr. Nguyen's attempts to distance himself and the Committee from the letter contradict  
16 the available information that establishes that the candidate was personally involved in drafting  
17 and disseminating the mailer, including copies of emails sent and received by him and the  
18 testimony of others involved in the scheme. Moreover, his responses do not undermine the  
19 conclusion that the letter constitutes a coordinated communication. A third-party paid for the  
20 printing and mailing of the letter, it was prepared by the candidate and the Committee's agents,  
21 i.e., Rudman, Chi Dinh and Mark Nguyen, and the candidate requested and paid for the list of

1 voters to whom the letter was sent, provided editing comments, and helped to ensure that the  
2 letter was disseminated at the desired time.

3 Because Mark Nguyen paid for the letters to be printed and mailed and he assisted the  
4 Committee in the creation and dissemination of the letter, the letter constitutes a coordinated  
5 communication, and Mark Nguyen's payment of \$4,104.57 is an excessive in-kind contribution  
6 to the Committee.<sup>3</sup>

7 Moreover, this conduct was knowing and willful.<sup>4</sup> The candidate was personally  
8 involved in drafting and disseminating the letter, and his efforts to try to hide his and the  
9 Committee's involvement strongly suggest a knowing and willful violation of the Act. By acting  
10 through others, sending the letter out under the name of a third-party organization, and stealing  
11 the signature and name of an innocent bystander, Tan Nguyen and his Committee attempted to  
12 conceal the true sender of the letter to benefit his campaign. As a result, the Commission finds  
13 there is reason to believe that Tan Nguyen for Congress and Tien Nguyen, in her official capacity  
14 as Treasurer, knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 434(b) by accepting and  
15 failing to report, an excessive in-kind contribution in the form of a coordinated communication.

---

<sup>3</sup> Mark Nguyen made a \$2,100 contribution to Tan Nguyen's committee on September 24, 2006. Thus, because he had not reached the \$2,300 individual contribution limit, \$200 was subtracted from the amount he paid to print and mail the letter.

<sup>4</sup> The phrase knowing and willful indicates that "actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H 2778 (daily ed. May 3, 1976); see also *Federal Election Comm'n v. John A. Drumm for Cong. Camr.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between "knowing" and "knowing and willful"). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5<sup>th</sup> Cir. 1990). An inference of a knowing and willful act may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *Id.*, at 214-15.

12044314143

**B. The Committee Knowingly and Willfully Failed to Include a  
Required Disclaimer on the Letter**

The letter constitutes a public communication because it was a mass mailing (more than 500 pieces of mail matter of identical or substantially similar nature within any 30-day period) to the general public as defined by 11 C.F.R. §§ 100.26 and 100.27. A political committee that makes a disbursement for a mailing that was paid for and authorized by a candidate, the candidate's authorized political committee or its agent must state on the communication that it was paid for by such authorized political committee. See 2 U.S.C. § 441d(a)(1). If the communication was paid for by other persons but authorized by a candidate, the candidate's authorized political committee or its agents, the communication must state that it was paid for by such other person and authorized by such political committee. Accordingly, the letter was required to contain the appropriate disclaimer. 11 C.F.R. § 110.11(a). Disclaimers for written communications also must be of sufficient type size to be clearly readable, contained in a printed box set off from other content, and there must be sufficient color contrast between the print and the background color. See 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(2).

Although Tan Nguyen argues that he did not "authorize" the letter, his statement is not credible in light of other statements he has made and is contradicted by the available information. In short, he helped to draft the letter, paid for part of it, and knew that friends would be sending a letter out. Thus, the letter should have contained a disclaimer stating that it was authorized by Tan Nguyen or the Committee and paid for in part by Mark Nguyen and in part by the Committee. See 11 C.F.R. § 110.11(b)(1). Because it did not, the Committee has violated the Act.

Moreover, the violation of the disclaimer provisions appears to have been knowing and willful. The Committee likely was somewhat familiar with the Act's requirements because other mailings sent by the Committee do contain some of the required information required by the disclosure provisions. See Tan Nguyen Response, Exhibits A-D; see also [www.tanforcongress.com](http://www.tanforcongress.com) (under "mailers" link, mailers contain some, but not all, information required by the Act). In addition, it is apparent that Tan Nguyen and the Committee intentionally concealed their identity so that recipients would not know that they authorized and paid for the letter. See MUR 4919 (East Bay Democratic Committee) (Commission found reason to believe respondents knowingly and willfully violated 2 U.S.C. § 441d(a) by concealing identity). Accordingly, the Commission finds reason to believe that Tan Nguyen for Congress and Tien Nguyen, in her official capacity as Treasurer, knowingly and willfully violated 2 U.S.C. § 441d(a).

**C. The Committee Failed to Report the Cost of the Voter List**

An authorized political committee's disclosure reports must show all disbursements. See 2 U.S.C. § 434(b)(4). A Committee's disclosure reports must also show contributions from the candidate. See 11 C.F.R. §§ 104.3(a)(3)(ii) and 116.5(b). The Committee's disclosure reports do not show the disbursement for the voter list or that the payment for the voter list was a contribution from the candidate. Thus, the Commission finds reason to believe that Tan Nguyen for Congress and Tien Nguyen, in her official capacity as Treasurer, violated 2 U.S.C. § 434(b)(4).

**D. Other Alleged Violation**

CDOJ alleges that the Committee lacked a named treasurer for more than a 10-day period, in violation of 2 U.S.C. § 433(c), but the complaint does not state the relevant dates. The information is not apparent from the Committee's disclosure reports or an RFAI that the Reports Analysis Division sent the Committee about the issue. Given the relatively minor nature of the violation and the lack of information to allow us to discern one way or another whether a violation occurred, the Commission dismisses this allegation. See Policy Statement Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (March 16, 2007).